

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### Common Interest Communities Workgroup Meeting Summary

Wednesday, August 30, 2017

House Room 1, The Capitol

**Delegate Bulova** called the meeting to order at 10:05 AM.

**Delegate David Bulova** welcomed the workgroup members and audience. He then explained that the workgroup would make recommendations on the subject matter on the agenda; it may be practical advice or recommendations for improved legislation to be taken to the full Commission for approval and endorsement.

#### Issue: Declarant Control of POA Board

**Senator Siobhan Dunnivant** spoke about SB 1401 (SB1401; Dunnivant, 2017) drafted because a constituent brought forth an issue involving Grey Oaks, a 450 home community and planned development, built in 2003. The declarant still remains in control of the Board and will continue to do so, as stipulated in the contract, until 100% of lots are sold. There have been low sales in the development and the homeowners are upset because they have "no vote, no voice." The homeowners asked, and were denied, a phasing-in period for Board representation. They feel it is unjust as they are paying HOA fees and they do not have a promised playground, and there are still unpaved neighborhood roads.

**Kim Kacani of HHHunt Properties** also spoke to the issue saying that her organization seeks a balance for its Boards; the developer has an investment in communities they have built such as Wellesley and Windham in Henrico, and Charter Colony in Chesterfield. Hunt has its own management firm and in five communities residents have hired the management firm back to run the Board.

The developer has made substantial infrastructure improvements and the deed restrictions are contractual and residents give up rights for protections. Property owner associations (POA's) have very little regulation, whereas condominiums have extensive regulation--see Sections 55-509.1:1 and 509.2 of the Code of Virginia.

**Delegate Chris Peace** suggested that the quality of development begins with local government and the developer needs incentives to keep development up to good standards. Penalties are the only way to have financial leverage over the governing document.

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DELEGATE DANNY W. MARSHALL  
DELEGATE DAVID L. BULOVA  
DELEGATE BETSY CARR  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR GEORGE L. BARKER  
SENATOR WILLIAM M. STANLEY, JR.

MARK K. FLYNN  
LAURA D. LAFAYETTE  
LAWRENCE PEARSON

**Goal/ solution:**

Shore up process with localities, determine if bonds are in place or conditions have been proffered. Additionally, there should be transparency for homeowners achieved through developing a best practices (gold standard of what communities should have) manual and transparency in books and records so that the expectations of future home owner can be managed.

A sheet with the disclosure packets outlining Board controls etc. was also suggested at the meeting.

**Issue: Fees for Disclosure Packets by Associations Not Professionally Managed**

**Senator Vivian Watts** spoke to HB 2376 (HB2376; Watts, 2017) and said this is her third year pleading case that fees should be same for self-managed organizations as those with a paid manager. Originally, people thought self-managed meant that organization was formed when there were 10-20 homes on a leftover street, but close to 25% of self-managed associations are comprised of 500 or more homes.

The cost to an association to be professionally managed is \$30,000-40,000 so it is not always cost beneficial for the homeowner. A special assessment would be needed to provide the fee as the original documents from associations of a certain age say costs cannot be more than cost of living.

It was mentioned that the original idea was for a 10-cent per-page fee for copies and volunteers should not be paid. A discussion ensued about the interplay between condominium /POA act and recodification of Title 55 (But, please note: no substantive changes may be made in the recodification.)

**Goal/solution:**

The workgroup as a whole expressed that preparers ought to be reimbursed for disclosure packets as long as it is of the same quality package as that of professionally managed organizations. Electronic filing among professionally and non-professionally managed organizations should be highly encouraged.

**Senator Scott Surovell** spoke to three homeowner and condominium owner association issues as noted below.

**Issue: HOA/COA Insurance Minimums**

- Last fall, a 550-unit condominium sustained a partial collapse resulting in the condemnation of 35-40 units. The cause was improper maintenance. The association maintained an \$87M policy for fire/flood, but only \$1M for general liability so all homeowner's sustained massive uninsured losses.
- HOAs/COA's should maintain sufficient liability insurance relative to the value of the property they are insuring.
- This will obviously result in some increased insurance expense, but it should not be significant relative to their risk being insured.

**Goal/solution:**

Suggested solution by **Scott Surovell**: General Liability insurance minimums should be equal to greater of \$1M or 50% of value of assets under management. The workgroup did not have agreement as questions were raised if Lloyds of London would need to be secondary insurer. Also, there is a need to look for liability and negligence and determine who was negligent.

**Issue: Capital Reserves/Stormwater**

- A recent survey of privately maintained stormwater facilities in one part of Fairfax County found that 75% of them were out-of-compliance and required maintenance.
- Senator Surovell noted he has never seen a reserve study that either evaluated stormwater facilities or projected capital needs relative to maintaining them.
- Several HOA's have failed due to dam maintenance costs - e.g. in Surovell's district.
  - Stafford County Board of Supervisor's just asked for state money to help with this
- Stormwater facility evaluation and projection needs to be part of the standard five-year plan
  - Senator Surovell also stated that he has never seen an HOA/COA annual budget that specifically sets for the capital reserve study needs/statute as currently required by the Code.
  - Plus, deferred capital reserve needs are a major potential liability that all purchasers should be advised about in the standard disclosure before purchasing a property.

**Suggested Proposals from Senator Surovell:**

- **Proposal #1** - Local government was asked to ascertain what may be needed in this situation. It was proposed to explicitly require stormwater facilities to be assessed and projected as part of the five-year capital reserve study and require the annual audit to be available to purchasers. There was tacit agreement among the workgroup members.
- **Proposal #2** - Include a conspicuous statement in each budget as to total amount of unfunded capital needs pursuant to reserve study and amount divided by the number of homeowners and amend Code of Virginia sections 55-509.5 and 55-79.97 to require the same thing in the disclosure packet.

**Issue: Redacted Records**

- Current code is silent as to whether an HOA/COA can withhold an entire record if it contains exempt information or whether it must redact.
- In all violation proceedings:
  - Homeowner has right to be notified of charges and all facts supporting charges
  - Names of all individuals witnessing facts and to be called as witnesses in the hearing
  - Right to cross-examine all persons providing facts in hearing
  - Association has the burden of proof
  - Burden of proof is preponderance of evidence
  - All hearings and board deliberations hearings shall be audio recorded
- All votes on violations shall be recorded votes and made available to the accused

**Suggested Proposal from Senator Surovell:**

- **Proposal:** Require HOA/COA's to redact exempt information from records instead of withholding entire records.
  - **Senator Scott Surovell** said if any document has objectionable material under 59-79.74:1(c) or 55-510(c), then the record must be produced in redacted format - basically paralleling the provisions added to FOIA in 2016.
- Those opposed said that salary information is protected in condominium associations and in POA's certain salaries, at certain levels do not have to be disclosed. The CIC is not required to withhold information but many withhold information and they may do so as they are private entities

**Heather Gillespie, Ombudsman of DPOR** spoke about the type and volume of calls she received over the years--a chart is available in materials. No issue or solution as this was presented; the material was for informational purposes only.

The Chair asked for public comment, hearing none, the meeting was adjourned at 1:00PM.